

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

BEFORE THE

ILLINOIS COMMERCE COMMISSION

DIVERSE COMMUNICATIONS, INC. )  
 ) DOCKET NO.  
 ) 04-0192  
Petition for suspension or )  
modification of Section 251(b)(2) )  
requirements of the Federal )  
Telecommunications Act pursuant to )  
Section 251(f)(2) of said Act; for )  
entry of interim order; and for )  
other necessary relief. )  
----- ) CONSOLIDATED

WOODHULL COMMUNITY TELEPHONE )  
COMPANY ) DOCKET NO.  
 ) 04-0197  
Petition for suspension or )  
modification of Section 251(b)(2) )  
requirements of the Federal )  
Telecommunications Act pursuant to )  
Section 251(f)(2) of said Act; for )  
entry of interim order; and for )  
other necessary relief. )

May 28, 2004

Springfield, Illinois

Met, pursuant to notice, at 9:00 a.m.

BEFORE:

MR. JOHN ALBERS, Administrative Law Judge

SULLIVAN REPORTING CO., by  
Carla J. Boehl, Reporter

1       Lic. #084-002710

2       APPEARANCES:

3               MR. GARY LLOYD SMITH  
4               1204 S. Fourth Street  
              Springfield, Illinois 62703

5                       (Appearing on behalf of Petitioners)

6               MR. RODERICK S. COY  
7               MR. HARAN C. RASHES  
              2455 Woodlake Circle  
8               Okemos, Michigan 48864

9                       (Appearing on behalf of Verizon  
                      Wireless via teleconference)

10              MR. MATT HARVEY  
11              160 North LaSalle Street  
              Suite C-800  
12              Chicago, Illinois 60601

13                      (Appearing on behalf of staff of the  
14                      Illinois Commerce Commission via  
15                      teleconference)

16

17

18

19

20

21

22

23

1

2

INDEX

3

WITNESSESDIRECTCROSSREDIRECTRECROSS

4

None.

5

6

7

8

9

10

11

12

13

EXHIBITS

14

None.

15

16

17

18

19

20

21

22

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

PROCEEDINGS

JUDGE ALBERS: By the authority vested in me by the Illinois Commerce Commission, I now call Docket Number 04-0192 which has been consolidated with Docket Number 04-0197, as well as docket numbers 01-0194 -- strike that, 04-0194, 04-0195, 04-0196, 04-0198, and the consolidated Dockets 04-0199 and 04-0200. These dockets concern the petitions of various incumbent local exchange carriers who all seek a suspension or modification of Section 251(b)(2) requirements of the Federal Telecommunications Act. Said suspensions or modifications are sought pursuant to Section 251(f)(2) of the Federal Telecommunications Act. This hearing has been called on an emergency basis to address the motion to compel filed by the carriers.

May I have the appearances for the record, please?

MR. SMITH: Good morning, Judge. My name is

1 Gary Lloyd Smith. My business address is 1204 South  
2 Fourth Street, Springfield, Illinois 62703. I  
3 appear on behalf of all of the petitioners you named  
4 in this docket.

5 MR. HARVEY: Appearing for the Staff of the  
6 Illinois Commerce Commission, Matthew L. Harvey, 160  
7 North LaSalle Street, Suite C-800, Chicago, Illinois  
8 60601.

9 JUDGE ALBERS: And for Verizon Wireless?

10 MR. RASHES: Good morning, Your Honor. Haran  
11 C. Rashes and Roderick S. Coy of the Clark Hill,  
12 P.L.C., 2455 Woodlake Circle, Okemos, Michigan  
13 48864.

14 JUDGE ALBERS: Thank you. Let the record  
15 reflect that there are no others wishing to enter an  
16 appearance.

17 Are there any preliminary matters before we  
18 turn to the motion to compel and one other matter I  
19 want to raise? Nothing else to bring to my  
20 attention?

21 MR. SMITH: Nothing else to bring to your  
22 attention, Judge.

1           JUDGE ALBERS:   Okay.   The first thing I wanted  
2           to touch upon before we get to the motion to compel  
3           is the motion to reconsider the ruling regarding the  
4           appearances by Verizon Wireless's counsel.   I have,  
5           like I said, received that motion.   I have the  
6           response of Verizon Wireless.   And at this time I  
7           must ask for a reply to the response, if you have  
8           one.

9           MR. SMITH:   Orally, you mean?

10          JUDGE ALBERS:   Orally.

11          MR. SMITH:   The only reply that I would have is  
12          that I disagree, believe that the rule that you are  
13          basing this on is not valid for the reasons that we  
14          have stated in our original motion and that the  
15          Commission cannot follow an invalid rule.   And I  
16          think other than that, that pretty well sums it up,  
17          Judge.

18          JUDGE ALBERS:   All right.   Thank you.   I will  
19          take your ruling on that when I rule on the motion  
20          to compel.

21                 Turning to the motion to compel then, the  
22          first thing I want to make sure is exactly which of

1       the DRs are still in dispute. Let me put it that  
2       way.

3               MR. SMITH: Did you good get Mr. Rashes's  
4       response this morning?

5               JUDGE ALBERS: Right, and I wanted to make sure  
6       you both agreed on which ones that you are still  
7       disputing.

8               MR. SMITH: He attached -- I believe he  
9       attached a copy of a letter that I sent to him, and  
10      his motion responds to the matters that are still at  
11      issue. The other matters have been responded to  
12      either publicly or privately and we will take those  
13      responses.

14              JUDGE ALBERS: Okay. So we are talking about  
15      1.01, 1.02, 1.04.

16              MR. SMITH: Correct, and those are all somewhat  
17      related. And then 1.07 through 1.09 are also of the  
18      same generic nature, I guess.

19              JUDGE ALBERS: And it is those six, Mr. Rashes  
20      and Coy, that you agree those are the six that are  
21      in dispute as far as you know?

22              MR. RASHES: Yes, we do.

1 JUDGE ALBERS: Okay. Now, I know in the motion  
2 to compel that you indicated you had further  
3 argument in support of the motion, and I know in  
4 their response Verizon Wireless urges me to limit  
5 you to what you stated in the motion to compel. I  
6 realize timing is an issue here as far as having to  
7 get things done quickly. Perhaps you didn't have  
8 enough time to put together, you know, all your  
9 thoughts before you could file this. I understand  
10 that somewhat. I normally do not care for having a  
11 motion to compel, to supplement it later. But given  
12 the circumstances I will permit it. And if you hear  
13 anything new, to Verizon Wireless, you are certainly  
14 able to respond. And after that I am going to let  
15 Mr. Smith give me an oral reply. So you have the  
16 last word since it was your motion.

17 MR. SMITH: Fine. Do you want to take these  
18 sort of in -- there is really two issues. I guess  
19 there is two larger issues. Shall we go back and  
20 forth on the first issue and then back and forth on  
21 the second issue as opposed to --

22 JUDGE ALBERS: If, given what you think you



1       want to argue, that would be easier, that would be  
2       fine.

3               MR. SMITH: I think it would be. Shall I  
4       proceed?

5               JUDGE ALBERS: Sure.

6               MR. SMITH: Thank you. Thank you for setting  
7       this thing on short notice, Judge. I believe I  
8       noted in my response there is ongoing discovery out  
9       there with regard to all of the parties. My clients  
10      have received two sets of data requests from the  
11      Staff, two different sets of data requests from  
12      Verizon Wireless. We are trying to respond to all  
13      of those and some of these we have responded to  
14      already. Time is an issue, and it was for that  
15      reason that I filed this motion to compel without  
16      waiting very long for a response and also without  
17      articulating lengthy arguments.

18              As to the group of data requests 1.01, 1.02  
19      and 1.04, the response argues that they are not  
20      relevant and that the issue in this case -- the  
21      issues in this case are perspective in nature with  
22      regard to whether or not Verizon Wireless may lose

1 business if a suspension is granted. The public  
2 convenience and necessity is also an issue in this  
3 case, and Verizon has placed an issue whether or not  
4 there is a demand for the local number portability  
5 service. I believe those do relate to the public  
6 convenience and necessity issue.

7 The data that we are asking for could lead  
8 to relevant and admissible information which is the  
9 standard for discovery here. On the first data  
10 requests we are essentially asking for the number of  
11 Verizon Wireless customers in the main town for each  
12 the petitioners. The second data request asks by  
13 zipcode the number of customers which those zipcodes  
14 are the areas that overlap the exchanges for each of  
15 my petitioners. So that what we are trying to  
16 determine is whether or not there are any or how few  
17 or how large the number of current Verizon Wireless  
18 customers there are.

19 I believe that's relevant. It's relevant  
20 for what they have at stake, whether the service is  
21 working. I mean, we have reason to believe that the  
22 service may not be reliable and sufficient for

1       someone to want to port their numbers to a wireless  
2       phone at this time based on the quality of service.  
3       The number of current customers relates to that. It  
4       may make it more probable than not. Now, I don't  
5       know that without knowing the numbers. Therefore,  
6       this is clearly within the scope of discovery.

7               As to 1.01 -- I am sorry, strike that. As  
8       to 1.04 --

9               JUDGE ALBERS: Let me ask you a question about  
10      the first two.

11              MR. SMITH: Sure, that would be fine.

12              JUDGE ALBERS: Are you asking, though, for the  
13      actual address of each customer?

14              MR. SMITH: No. If that is ambiguous, and  
15      counsel for Verizon hasn't raised that, I am looking  
16      for a number and I am not looking for a name and I  
17      am not looking for an address. I was trying to  
18      delineate the way they could go into their system  
19      and pull it up either by zipcode or by city.

20              JUDGE ALBERS: Okay.

21              MR. SMITH: As to 1.04, I am not asking for the  
22      billing addresses, either, of all of the Verizon

1       Wireless customers in Illinois. I am simply asking  
2       for them to give us a raw number of the number of  
3       current customers they have in Illinois. And I have  
4       used by billing address so they go in and is the  
5       billing address contained in Illinois and total  
6       whatever those are up.

7               Now, we have already executed a proprietary  
8       agreement. We keep these matters proprietary and in  
9       confidence. Obviously, there are public analysts  
10      who put out estimates on what the total number of  
11      customers Verizon has and they may have reasons for  
12      wanting to keep that number confidential. That  
13      number, it is our opinion, relates to the other  
14      number of customers they have and what Verizon has  
15      at stake in the issues they are raising. It is also  
16      comparative in that in other confidential answers  
17      that are not in dispute, Verizon has disclosed the  
18      take rate that it had for a six-month period within  
19      Illinois over, you know, from wireline to wireless.  
20      This total, again, this total that I am asking for  
21      in 1.04 is used for compare active purposes. Again,  
22      that's why I am asking that.

1           We can't turn a blind eye to the past.  
2       Verizon says everything is perspective in nature.  
3       Nobody has a magic crystal ball here to see what  
4       everything is. So the past has some proof and has  
5       some probative value on these issues, and these are  
6       issues that Verizon has raised either in its  
7       testimony or in its pleadings. We believe that this  
8       will help us or may help us on the demand issue and  
9       the coverage issue. Really they are both related to  
10      the demand issue. But if the coverage isn't  
11      sufficient and the current usage of their service is  
12      extremely low, we believe that that's probative of a  
13      current lack of demand. And with that I will yield  
14      to counsel.

15           JUDGE ALBERS: Mr. Rashes or Mr. Coy, did you  
16      hear anything new that you would like to respond to?

17           MR. RASHES: Yes, this is Mr. Rashes. Several  
18      things, Your Honor. First of all, when I talked to  
19      Mr. Smith on Tuesday and informed him that I would  
20      be getting back to him on Wednesday, much to my  
21      surprise first thing in the Wednesday I walk in and  
22      find a motion to compel. The FCC determines the

1 scope of this issue. It seems that Mr. Smith wants  
2 to relitigate what has already been decided by the  
3 FCC. The FCC came up with a mandate that carriers,  
4 including rural carriers such as the eight carriers  
5 in question in these dockets, were required to  
6 provide wireline to wireless local number  
7 portability by May 24. The FCC did not address  
8 demand. The FCC did not place demand in relevance  
9 at all, and in fact demand is not relevant to  
10 whether or not they should be providing it.

11 In addition, the numbers he is requesting  
12 are irrelevant to what that demand will be. The  
13 number of current customers Verizon Wireless has in  
14 any area is not indicative of how many customers we  
15 will have two months from now, ten months from now,  
16 or when the suspension they are requested expires,  
17 if they were to get it. Verizon is constantly  
18 improving their networks, constantly marketing their  
19 networks, and one of those marketing efforts is  
20 wireline to wireless local number portability, and  
21 it is something that is prospective.

22 There are multiple other carriers in the

1 state of Illinois, wireless carriers, who also would  
2 stand to benefit from wireline to wireless number  
3 portability. And to take Verizon's numbers, and the  
4 past numbers albeit, in isolation from the wireless  
5 industry as a whole in the state of Illinois would  
6 be prejudicial to Verizon Wireless and would be  
7 purely out of context and irrelevant to this  
8 proceeding.

9 Mr. Smith further says that we raised this  
10 issue. We have raised it purely from a prospective  
11 basis. It is clear that if a suspension is granted,  
12 we will not get any new wireline to wireless  
13 conversions in these territories. I think that's  
14 undisputed, and that's the issue that we are  
15 raising, and that will cause a loss of that  
16 prospective business.

17 In addition, one last point which I would  
18 like to raise and I will rely on my written comment,  
19 was Mr. Smith said that we provided the take rate.  
20 Well, we provided the take rate subject to and  
21 without waiving our objection. We still believe the  
22 take rate from November 24 onward is totally

1       irrelevant to this proceeding, has no indication of  
2       what the demand will be, if any, and, there again,  
3       the demand is irrelevant in these areas. And,  
4       therefore, just by providing that take rate and,  
5       once again under confidentiality and subject to our  
6       objection, does not automatically make these other  
7       three questions he is asking relevant, which is what  
8       he is saying to us.

9               With that, I trust you have read our  
10       written motion on this subject and I will rely on  
11       that as well.

12              JUDGE ALBERS: Okay. And do you have a reply  
13       on these three, with regard to these three  
14       inquiries?

15              MR. SMITH: Yes, I do. First of all, Judge,  
16       perhaps Mr. Rashes and I, when we spoke on the  
17       phone, didn't communicate clearly and I apologize if  
18       he misunderstood me. When I left the phone  
19       conference, I asked him to respond that afternoon  
20       and waited 24 hours. And if he was going to get  
21       back to me later on the next day, that was not my  
22       impression. But I apologize for any confusion on



1       that. But due to the time limitations, I felt that  
2       I had to move quickly.

3               As to the substance, the standard that he  
4       cites in his motion and that he raises here with  
5       regard to the FCC isn't economic harm on the  
6       company. It is the economic harm that we are  
7       raising as the economic harm on the users. So we  
8       are not trying to relitigate the FCC's standards or  
9       the congressional standards. I think we are missing  
10      the standards here in terms of the legal issue that  
11      he is raising and that we are raising.

12             In terms of marketing, if the service  
13      doesn't work presently, I think that's going to lead  
14      to some greater customer confusion. If we look at  
15      these numbers, if these show zero or one or two, I  
16      think that those numbers can be very probative of  
17      the issues we are talking about. Demand relates to  
18      public convenience and necessity. I do agree with  
19      him that he disclosed a take rate subject to other  
20      objections, but now is not the time to rule on those  
21      and I am not trying to have those admitted into  
22      evidence.

1                   In terms of other wireless carriers, no one  
2           else has intervened and certainly whatever numbers  
3           are for other wireless carriers is not going to  
4           directly impact Verizon Wireless. So what you rule  
5           on these three, on these three matters, will impact  
6           the scope of the testimony that will be admitted.  
7           If you determine that these matters are not  
8           discoverable, then it will impact certain other  
9           testimony that I think has already been filed by  
10          both sides on the issues of demand and potential  
11          impact.

12                 JUDGE ALBERS: Okay.

13                 MR. SMITH: That's it.

14                 JUDGE ALBERS: All right. Turning to the next  
15          set of three, did you have any further comment on  
16          those?

17                 MR. SMITH: As to those, Judge, those are --  
18          those three relate to Verizon Wireless's  
19          intervention and what they knew and when they knew  
20          it. The responses are not complete as requested. I  
21          would note that there is an attempt to answer these  
22          questions in terms of someone in the legal

1 department first becoming aware in March of '03  
2 which I believe actually means March of '04. There  
3 is one witness that Verizon Wireless has filed  
4 prepared testimony on, Mr. McDermott. I don't know  
5 whether he is in the legal department and who that  
6 is referring to or not. I am not asking for  
7 privileged information. I am not asking for  
8 attorney/client work product. I am simply asking  
9 the identity of the individual involved. That may  
10 impact on what I ask or don't ask Mr. McDermott, as  
11 to whether or not he is in the legal department or  
12 not.

13 Now, there are a strange set of  
14 circumstances that have occurred, at least from my  
15 perspective, with regard to Verizon and Staff, Staff  
16 counsel. And I am trying to determine whether or  
17 not there is some relationship or some sort of  
18 alliance between these two entities or not and that  
19 may impact the order of cross examination and who is  
20 going to have last cross and recross, etc., and the  
21 scope of what gets raised in what order.

22 The coincidences that I am referring to are

1       that in an off-the-record discussion Staff counsel  
2       at one point raised providing notice to wireless  
3       carriers and a short time thereafter Verizon  
4       Wireless intervened. That could be coincidental.  
5       In an issue having to do with whether or not there  
6       were bona fide requests outstanding or not, as I  
7       previously indicated in a status hearing, I sent to  
8       Staff counsel a piece of correspondence from Verizon  
9       Wireless. I happen to have sent one from Montrose  
10      Mutual Telephone Company in an effort to try to work  
11      out an objection that was pending at that time.  
12      When Verizon Wireless intervened, curiously I was  
13      first served, of the ten dockets that I have, with a  
14      petition on Montrose Mutual Telephone Company. Now,  
15      that's a one out of ten shot.

16               Staff counsel's previous employment was on  
17      Speaker Madigan's staff. I note from the testimony  
18      submitted by Verizon and Mr. McDermott that he was  
19      previously employed on Speaker Madigan's staff.  
20      Now, I think I am entitled to know if there is some  
21      communications going on, some sharing of  
22      information, some -- as I said, I don't know what to

1       make of this. So I am simply asking in three  
2       questions how was Verizon made aware of this, who  
3       knew about it.

4               Now, they have told me when, except as to  
5       people in Verizon outside of their staff that they  
6       haven't consulted. I don't think these are  
7       difficult answers and they are clouding them in  
8       perhaps some claim of attorney/client privilege. I  
9       am not asking for communications, so there is no  
10      privilege issue here. I believe these are  
11      legitimate discovery requests. I am not trying to  
12      make any personal issues out of this. I am simply  
13      trying to determine any bias. Certainly bias, it  
14      goes to credibility. I think I am entitled to know  
15      those things. These were not idle requests.

16             With that, I will yield to Verizon.

17             JUDGE ALBERS: Okay. Mr. Rashes and Mr. Coy?

18             MR. RASHES: A lot of that was interesting news  
19      to us because we never knew about any of those  
20      coincidences. I would just like to state that, you  
21      know, if there was any alliance between us and  
22      Staff, I think Staff's testimony would have been

1 much different than it actually was.

2 We have provided -- when we found out, we  
3 provided -- the legal department found out and there  
4 was multiple people in the legal department that  
5 found out on the same date and time, and really the  
6 only question at issue here is identify the name of  
7 the individual from Verizon Wireless who first  
8 became aware of the petition filed. That is several  
9 people in the legal department and we feel this is  
10 irrelevant to the case. Those people and who they  
11 communicated that with are clearly subject to the  
12 attorney/client privilege and any of their  
13 communications, whether orally or written, are  
14 subject to that. And this has no relevance to the  
15 case at hand.

16 We were not served with these petitions.  
17 That goes without stating. I think Mr. Smith will  
18 admit that we were not served with these petitions.  
19 All of these petitions were publicly posted to the  
20 e-Docket system and an untimely basis allowed. And  
21 they were public petitions. I don't see any  
22 relevancy to whether or not a suspension should be

1 granted or denied as to when and how an intervenor  
2 found out. To the extent that he is trying to boot  
3 our intervention, which clearly he is based on his  
4 conclusion statement, if he wanted to do that, he  
5 should have appealed your order on a timely basis  
6 and this is not timely, Your Honor. And with that I  
7 will rely on whatever I provided you in writing.

8 MR. HARVEY: On behalf of Staff I am somewhat  
9 compelled to interject at this point. I have no  
10 specific knowledge of Staff engaged in any collusion  
11 with Verizon on this matter. I am very marginally  
12 familiar with this case, but I add that, you know,  
13 my understanding of our testimony is that we have  
14 generally, you know, supported the grant of a  
15 waiver. I further add that had any Staff member  
16 been contacted by or contacted any member of  
17 Verizon's legal staff while this matter was pending,  
18 they would have had to file some form of a  
19 disclosure if the matter was not procedural. I am  
20 unaware that any disclosure has been filed.

21 JUDGE ALBERS: And, Mr. Harvey, so the record  
22 is clear, you are participating today because

1       neither Mr. Madiar or Mr. Stanton are available?

2               MR. HARVEY:   That's correct.   I apologize,  
3       Judge, if my specific knowledge of this matter is  
4       not what it ought to be.

5               JUDGE ALBERS:   No, I just wanted the record to  
6       reflect why you weren't familiar with some of the  
7       details.

8               MR. HARVEY:   Well, thank you, Judge.   I  
9       appreciate your concern regarding my appearing to be  
10      an idiot.

11              MR. SMITH:   No, I wouldn't say that.

12              MR. HARVEY:   No, thank you, Judge.

13              JUDGE ALBERS:   Do you have a reply then?

14              MR. SMITH:   Yes, Judge, I want the record to be  
15      clear.   I am not accusing anybody of anything.  
16      However, I do believe that I am entitled to know the  
17      matters that I have raised and I am not asking for  
18      the nature of any internal Verizon communication  
19      that would involve legal advice that would be  
20      privileged.   Public communications are not  
21      privileged.   They have to involve some form of legal  
22      advice and that's not what any of these data



1 requests go to.

2           These data requests were served before  
3 Staff's testimony was filed. So, I mean, I filed  
4 these on -- I think I served these on May 7, gave  
5 two weeks, got some objections, and now we are here.  
6 The answers to these questions may, again, determine  
7 the scope of cross examination of Mr. McDermott and  
8 whether new matters are raised that could be  
9 battered back -- sometimes there is friendly cross  
10 examination that goes from one entity or one party  
11 to another, and I could outline all sorts of  
12 interplay here but I don't think that that furthers  
13 the matter.

14           I want to know if there was a communication  
15 here or not. I am not aware on any of these dockets  
16 of any public disclosure or not. And I am not  
17 finger pointing at anybody. I am just trying to  
18 determine if there is a relationship or not. If  
19 there is no relationship, I think this matter can --  
20 the answers can be readily disposed of. Answers can  
21 -- you know, I don't see any harm in a disclosure  
22 that says either they have got it off of e-Docket or

1       they have got it somewhere, got it somewhere other  
2       than Staff. If that's the answer, I don't see the  
3       problem here. Other than that, I will rest on my  
4       argument.

5               JUDGE ALBERS: Okay.

6               MR. SMITH: I have one other observation,  
7       Judge, with regard to, the ruling on the first group  
8       could impact the rebuttal testimony that I have due  
9       on the day after Memorial Day, June 1. The ruling  
10      on the second group does not go to the testimony  
11      that I will be filing but could at the hearing  
12      process.

13              JUDGE ALBERS: Right. Well, I suspect you are  
14      getting towards the timeliness of my ruling and when  
15      your testimony will be due thereafter.

16              MR. SMITH: I was curious about that in terms  
17      of --

18              JUDGE ALBERS: There are some -- well, first I  
19      just want to note, I do recall the conversation  
20      regarding whether or not wireless carriers should  
21      receive notice of the petitions. I recall that.  
22      Also, I am aware of Mr. Madiar's former place of

1       employment and I did just in looking over the  
2       testimony very briefly noticed where Mr. McDermott  
3       was from, and I am not suggesting by making that  
4       observation there is any connection. I am just  
5       saying, yes, I understand your point there.

6               But there are a couple of points that  
7       people raised here this morning that I want to think  
8       about. I want to look at the Telecom Act, the  
9       Federal Telecom Act, and I think it would be more  
10      prudent at this point if I just take a little bit of  
11      time to myself after the hearing to consider that  
12      initial ruling. Hopefully, the Clerk's office would  
13      have that out before noon today.

14             Just preparing for either contingency here,  
15      in the event that I grant the motion to compel, what  
16      would you consider reasonable as far as your due  
17      date for your testimony?

18             MR. SMITH: Well, Staff filed a motion to late  
19      file which is still pending. They filed it 24 hours  
20      later. And the schedule is still yet to be set, but  
21      I believe the perspective schedule, due to the out  
22      of town witnesses and all would have my cases coming

1       at the end. So I don't believe that it would  
2       prejudice the parties or delay your review of the  
3       proposed testimony if I had another day or two after  
4       Tuesday to file. But again I recognize that there  
5       hasn't been a schedule set and I don't know if we  
6       all need to get together to talk about that or not.  
7       I believe Mr. Muncy was going to try to circulate a  
8       schedule with Staff and Mr. Rashes. But if the  
9       assigned Staff counsel are not in there today --

10           MR. HARVEY: I can't make any commitments about  
11       the schedule.

12           MR. SMITH: I am not asking you to, Mr. Harvey.  
13       It would mean then that we wouldn't be able to even  
14       talk about that until Tuesday.

15           MR. COY: Your Honor, this is Mr. Coy and we  
16       will also be circulating a proposed scheduling  
17       today, probably contemporaneously with Mr. Muncy's.

18           JUDGE ALBERS: Okay. That is fine. When we  
19       are done here, I am going to give you a couple of  
20       dates, certain times I know I can't be available, so  
21       we can take care of that off the record, though.

22                   Just with regard to the additional time, if

1       any you might get, just keep in mind that I am still  
2       going to need everything in time for me to get  
3       everything reviewed by Friday because I will be  
4       setting in hearings, whether anyone else is,  
5       starting Monday.

6               MR. SMITH: I appreciate that, Judge, and I may  
7       still be able to complete this by Tuesday. If I  
8       can, I certainly will.

9               JUDGE ALBERS: Well, I think I have heard  
10      everything I need to hear to make rulings on these.  
11      Unless anyone has any additional comment, I am  
12      prepared to continue this. So speak now or forever  
13      hold your peace until we next meet.

14              MR. SMITH: I have nothing further. I may want  
15      to raise something off the record on a scheduling  
16      matter.

17              MR. HARVEY: Nothing from Staff.

18              JUDGE ALBERS: Nothing from Verizon Wireless?

19              MR. RASHES: Nothing, Your Honor.

20              JUDGE ALBERS: Then we will continue these to  
21      June 7 at 9:00 a.m. thank you.

22                              (Whereupon the hearing  
                            in this matter was

continued until June 7,  
2004, at 9:00 a.m. in  
Springfield, Illinois.)